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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,148	12/13/2001	David Michael Matela	16258	3181

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EXAMINER	
SALVATORE, LYNDA	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/023,148	MATELA ET AL.	
	Examiner	Art Unit	
	Lynda M Salvatore	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 November 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20 and 41-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20,41-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's amendment and accompanying remarks filed 11/26/04 have been fully considered and entered. Applicant's remarks are not found persuasive of patentability for reasons set forth herein below.

Election/Restrictions

2. Applicant's election with traverse of method claims 47-50 in the reply filed on 11/26/04 is acknowledged. The traversal is on the ground(s) that claims 47-50 are directed to a non-woven web formed by a coform process and not to a coform process. This is argument is found persuasive. As such, claims 47-50 will be examined on the merits.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-6,12-18,20, and 41-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over of Jackson et al., US 5,952,251 in view Everett et al., US 6,437,214 for reasons set forth in the last Office Action dated 07/25/04.

Applicant asserts that the combination of prior art fails to teach uniformly dispersing a second material into the substantially continuous multi-component filaments in the z-direction. Applicant further submits that a high speed rotary valve disperses the second material into the substantially continuous multi-component filaments in the z-direction. Applicant discloses that such an apparatus produces a coform web having the concentration of the second material essentially the same at the

bottom, top and middle region between the surfaces. Specifically Applicant discloses that the instant coform web has a concentration of about 15 weight percent continuous filaments at the bottom and top surfaces and middle region and about 85 weight percent pulp fibers at the bottom and top surfaces and middle region. These arguments are not found persuasive. With regard to Applicant's argument that the prior art fails to teach the all of the limitations set forth in the above aforementioned rejected claims, the Examiner maintains that the primary reference of Jackson et al., teaches all of the structural and/or chemical limitations regarding the coform web. With regard to the z-direction and/or uniform dispersion, Jackson et al., teaches and illustrates in figure 1, other merging angles may be employed if desired to vary the degree of mixing and/or to form concentration gradients through the structure (Column 13, 55-61). Jackson et al., only lacks a specific teaching to providing a uniform mixture. Thus, the secondary reference of Everett et al., was provided to evidence that coform webs comprising a blend of fibers and/or particulate can be homogenously mixed. The Examiner considers homogenously mixed equivalent to uniformly mixed. With regard to Applicant's argument that the instant invention is formed using a high speed rotary valve. The Examiner respectfully points out that Applicant's arguments are not commensurate in scope with the present claims. Applicant is ~~not~~ claiming a product ~~by process or~~ Not a method forming a coform non-woven web. As such, the process employed by the prior art, though different from Applicant's, is irrelevant with respect to the final product's structural limitations. Applicant is only claiming a coform web article having a substantially uniform structure wherein the secondary material is substantially uniformly

dispersed within the multi-component fibers in the z-direction of the coform non-woven web.

Applicant also submits that the present invention provides a coform web with a concentration of about 15 weight percent continuous filaments at the bottom surface, the top surface and the middle region an about 85 weight percent pulp fibers at the bottom surface, the top surface and the middle region. Applicant refers to comparative data using prior art not applied in the rejection, but disclosed in the specification to evidence that that the exemplified prior art coform webs do not have the desired uniformity distribution since they are not made using Applicant's rotary valve method. In response, the Examiner respectfully points out that Applicant is referring to prior art disclosed in the specification rather than the applied prior art and the process disclosed in the applied or otherwise prior art is irrelevant with respect to the final product. Further, Applicant has not claimed a top, bottom or middle region comprising weight percentages of the thermoplastic filaments and secondary material. While claims are interpreted in light of the specification it is improper to import limitations from the specification into the claims. As such, it is the position of the Examiner that combination of Jackson et al., in view Everett et al., meets the structural limitations of the final product.

5. Claims 1,2,6-8,12,14, 20, 41-46 and 51-54 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neely et al., PCT WO 00/66824 in view Everett et al., US 6,437,214 for reasons set forth in the last Office Action dated 07/25/04.

It is the position of the Examiner that the above arguments are also applicable to the rejection of claims 1,2,6-8,12,14, 20, 41-46 and 51-54 rejected under 35

U.S.C. 103(a) as being unpatentable over Neely et al., PCT WO 00/66824 in view Everett et al. See above.

6. Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al., US 5,952,251 and/or Neely et al., PCT WO 00/66824 in view of Everett et al., US 6,437,214, as applied to claim 1 above, and further in view of Fontenot et al., PCT WO 00/34567 for reasons set forth in the last Office Action dated 07/25/04.

The above aforementioned rejected claims depend from claims in which the rejection is maintained. See Above. Applicant has not provided any new arguments for which to consider.

7. Claims 9 and 19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neely et al., PCT WO 00/66824 in view of Everett et al., US 6,437,214, as applied to claims 1 and 8 above, and further in view of NIPPON ESTER CO LTD, JP 2001181932 A for reasons set forth in the last Office Action dated 07/25/04.

The above aforementioned rejected claims depend from claims in which the rejection is maintained. See Above. Applicant has not provided any new arguments for which to consider.

Claim Rejections - 35 USC § 103

8. Claims 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over of Jackson et al., US 5,952,251 in view Everett et al., US 6,437

The patent issued to Jackson et al., discloses a water dispersible fibrous web comprising melt-spun continuous fibers, staple reinforcing polymer fibers, and an absorbent material (Column 45, 30-35, and Column 8, 55-60). Jackson et al., defines a coform web as continuous melt-spun reinforcing fibers intermixed with shorter absorbent

fibers such as pulp and super-absorbents (Column 8, 10-15). The continuous fibers may be formed from various polymers such as polyesters, polyethylene terephthalate, polyamides, and a blend of at least two these materials to form bicomponent or multicomponent fibers (Column 9, 28-35 and 55-65). The staple fibers may be formed from the same polymers as listed above as well as nylons and polyurethanes (Column 9, 59-68). The absorbent material may consist of wood pulp fibers and super-absorbent materials in the form of particles, fibers or flakes (Column 10, 41-45,56-67). The amount of continuous fibers ranges from 30% to 35%, the staple fiber concentration ranges from 5% to 8%, and the amount of absorbent material ranges from 40% to 60% (Claims 18 and 19). Jackson et al., teaches in example 1 a non-woven comprising 50% continuous fibers and 50% of staple reinforcing polymer/pulp fibers wherein 80% is pulp and 20% is polymer (Column 18,55-65). Jackson et al., teaches that coform non-woven webs are well suited for personal absorbent care articles (Column 11, 20-30).

Jackson et al., fails to teach dispersing the secondary superabsorbent materials uniformly, however, the patent issued to Everett et al., teaches an absorbent core structure comprising a fibrous coform material comprising a blend of superabsorbent materials and synthetic hyrdrophillic fibers made from inherently wettable thermoplastic polymers (Column 13, 50-60 and Column 14, 30-35). Everett et al., specifically teaches that the superabsorbent materials may be substantially homogenously mixed with the hydrophilic fibers (Column 14, 35-40).

Therefore, motivated by the desire to provide consistent absorbency throughout the absorbent core, it would have been obvious to one having ordinary skill in the art at

the time the invention was made to form the coform taught by Jackson et al., by homogeneously dispersing the secondary material as taught by Everett et al.

With regard to claims the limitations of attenuating the thermoplastic filaments with a fluid stream perturbed by a rotary valve, said limitations are considered method limitations not germane to the final product structure. It is the position of the Examiner that the combination of prior art meets the chemical and structural limitations set forth. As such, the presence of process limitations on product claims in which the product does not otherwise patently distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

The claimed invention appears to be the same or similar to the product produced by the combination of prior art, although produced by a different process. The burden is shifted to Applicant to establish an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218, USPQ 289.2

9. Claims 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Neely et al., PCT WO 00/66824 in view Everett et al., US 6,437,214.

The published PCT application to Neely et al., teaches a non-woven comprising continuous fibers oriented in a z-direction (Abstract). Neely et al., teaches enhancing the absorbency of the non-woven web with an absorbent such as super-absorbent particles as a coform (Page 8,1-3). The continuous fibers are bicomponent fibers made from various polyolefins, polycarbonates, polystyrenes, thermoplastic elastomers, fluoropolymers, and vinyl polymers (Page 7,6-31).

Neely et al., fails to teach dispersing the secondary superabsorbent materials uniformly, however, the patent issued to Everett et al., teaches an absorbent core structure

comprising a fibrous coform material comprising a blend of superabsorbent materials and synthetic hyrdrophillic fibers made from inherently wettable thermoplastic polymers (Column 13, 50-60 and Column 14, 30-35). Everett et al., specifically teaches that the superabsorbent materials may be substantially homogenously mixed with the hydrophilic fibers (Column 14, 35-40).

Therefore, motivated by the desire to provide consistent absorbency throughout the absorbent core, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the coform taught by Neely et al., by homogeneously dispersing the secondary material as taught by Everett et al.

With regard to the limitations of attenuating the thermoplastic filaments with a fluid stream perturbed by a rotary valve, said limitations are considered method limitations not germane to the final product structure. It is the position of the Examiner that the combination of prior art meets the chemical and structural limitations set forth. As such, the presence of process limitations on product claims in which the product does not otherwise patently distinguish over the prior art, cannot impart patentability to the product. *In re Stephens*, 145 USPQ 656

The claimed invention appears to be the same or similar to the product produced by the combination of prior art, although produced by a different process. The burden is shifted to Applicant to establish an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218, USPQ 289.2

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 571-272-1482. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1482. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 1st, 2005

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